

ENGROSSED HOUSE
BILL NO. 3102

By: Perry, Deutschendorf and
Ross of the House

and

Robinson of the Senate

An Act relating to telecommunications; creating the Electronic Records and Signature Act of 1998; stating purposes of the act; providing definitions; stating application of the act; providing exceptions for certain rules of law; providing for application of other rules of law; providing for resolution of conflicts of law; providing for optional use of electronic records or signatures; establishing validity of an electronic record; allowing other requirements by agreement; establishing validity of an electronic signature; allowing other requirements by agreement; providing for admissibility of electronic records or signatures; allowing original form requirements to be satisfied by certain electronic record; allowing retention requirements to be satisfied by certain electronic records; providing for form of retention; providing for retention in a certain manner; allowing governmental entities to specify additional requirements; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 960 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Electronic Records and Signature Act of 1998".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 961 of Title 15, unless there is created a duplication in numbering, reads as follows:

The purposes of the Electronic Records and Signature Act of 1998 are:

1. To facilitate and promote commerce transactions by validating and authorizing the use of electronic records and electronic signatures;
2. To eliminate barriers to electronic commerce transactions resulting from uncertainties relating to writing and signature requirements;
3. To simplify, clarify, and modernize the law governing commerce transactions through the use of electronic means;
4. To promote public confidence in the validity, integrity, and reliability of electronic transactions; and
5. To promote the development of the legal and business infrastructure necessary to implement electronic commerce transactions.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 962 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the Electronic Records and Signature Act:

1. "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies;

2. "Electronic agent" means a computer program or other electronic or automated means used, selected, or programmed by a person to initiate or respond to electronic records or performances in whole or in part without review by an individual;

3. "Electronic record" means a record created, stored, generated, received, or communicated by electronic means, including but not limited to, a computer program, electronic data interchange, electronic or voice mail, facsimile, telex, telecopying, scanning and similar technologies;

4. "Electronic signature" means any signature in electronic form attached to or logically associated with an electronic record executed or adopted by a person or its electronic agent with intent to sign the electronic record;

5. "Information" means data, text, images, sounds, codes, computer programs, software, databases, and the like;

6. "Person" means an individual, corporation, business trust, government or governmental unit or entity, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

7. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

8. "Rule of law" means a statute, regulation, ordinance, common-law rule, court decision, or other law relating to a transaction and enacted, established, or promulgated by this state, any agency, commission, department, court, or other authority or political subdivision of this state;

9. "Sign" means the execution or adoption of a signature by a person or the person's electronic agent;

10. "Signature" means any symbol, sound, process, or encryption of a record in whole or in part executed or adopted by a person or the person's electronic agent with intent to:

- a. identify the person,
- b. adopt or accept a term or record, or
- c. establish the informational integrity of a record or term that contains the signature or to which a record containing the signature refers;

11. "Term" means that portion of an agreement which relates to a particular matter; and

12. "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 963 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection B of this section, the Electronic Records and Signature Act applies to electronic records and electronic signatures generated, stored, processed, communicated, or used for any purpose and in any transaction.

B. This act shall not apply to:

1. Rules of law relating to the creation or execution of a will;

2. Rules of law relating to the creation, performance, or enforcement of an indenture, declaration of trust, or power of attorney;

3. Rules of law relating to mortgages, conveyances, surface and mineral leases, rights-of-way, and easements of real property;

4. Rule of law, Section 475.1 et seq. of Title 59 of the Oklahoma Statutes relating to persons licensed as a professional land surveyor or a professional engineer, and Section 46.1 et seq. of Title 59 of the Oklahoma Statutes relating to persons licensed as an architect or a licensed landscape architect; and

5. Rules of law which expressly require a written record to convey information or a transaction when the application of this act would manifest a result which is inconsistent with the intent of law as expressed or derived from the context of rule of law itself; provided, a requirement in the law that the information be in writing, printed, signed, or the like shall not in of itself establish an inconsistency.

C. A transaction subject to this act shall also be subject to:

1. Any applicable rules of law relating to consumer protection;
or

2. The Uniform Commercial Code as enacted in this state.

D. In the case of a conflict between this act and a rule of law referenced in subsection C of this section, the rule of law shall govern.

E. Nothing in this act shall be construed to require any person to use or permit the use of electronic records or electronic signatures.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 964 of Title 15, unless there is created a duplication in numbering, reads as follows:

A record shall not be denied legal effect, validity, or enforceability solely because it is in the form of an electronic record. If a rule of law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies that rule of law. Persons may agree to their own requirements regarding the method of generating, storing, and communicating electronic records with each other.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 965 of Title 15, unless there is created a duplication in numbering, reads as follows:

A signature shall not be denied legal effect, validity or enforceability solely because it is in the form of an electronic

signature. If a rule of law requires a signature, or provides consequences in the absence of a signature, an electronic signature satisfies that rule of law. Persons may agree to their own requirements regarding the method of generating, storing, and communicating electronic signatures with each other.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 966 of Title 15, unless there is created a duplication in numbering, reads as follows:

In any legal proceeding, nothing in the application of the rules of evidence shall deny the admissibility of an electronic record or electronic signature into evidence on the sole ground that it is an electronic record or electronic signature or on the grounds that it is not in its original form or is not an original.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 967 of Title 15, unless there is created a duplication in numbering, reads as follows:

If a rule of law requires a record to be presented or retained in its original form, or provides consequences for the record not being presented or retained in its original form, that requirement shall be met by an electronic record if the electronic record is shown to reflect accurately the information in the electronic record from the time when it was first generated in its final form.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 968 of Title 15, unless there is created a duplication in numbering, reads as follows:

If a rule of law requires that certain documents, records, or information be retained, that requirement is met by retaining electronic records if the information contained in the electronic record remains accessible. The electronic record shall be retained in the format in which it was generated, stored, sent or received or is in a format that can be demonstrated to reflect accurately the information as originally generated, stored, sent or received.

Also, the information, if any, shall be retained in a manner that enables the identification of the source of origin and destination of an electronic record and the date and time it was sent or received. Nothing in this section shall preclude any government or governmental entity or agency from specifying additional requirements for the retention of records, either written or electronic, that are subject to their jurisdiction.

SECTION 10. This act shall become effective January 1, 1999.

Passed the House of Representatives the 9th day of March, 1998.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate